LOH KIM HOE

v.

SYKT. KEMAJUAN KIM YON SDN. BHD.

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF ABDUL RASHID J
[CIVIL SUIT NO. 73 OF 1981]
31 OCTOBER 1981

TORT: *Trespass to land grant of interim injunction to restrain defendants from trespassing - Application to dissolve interim injunction - Effect of suppression of material facts - Duty to disclose.*

The plaintiff/respondent filed a writ applying for a declaration that the defendants/applicants were not entitled to enter, cross, use, occupy, possess or enjoy the plaintiff's land and for other consequential orders. Following it, the plaintiff applied for an interim injunction restraining the defendants from trespassing on the said land. The interim injunction was issued as applied to restrain the defendants from:

(a) trespassing on the plaintiff's land;

(b) taking away the produce of the said land; and

(c) obstructing the plaintiff or his servants or agents from peaceably occupying and/or possessing and/or enjoying the said land or any part thereof.

The defendants applied to have the interim injunction dissolved.

The defendants were the beneficial owners of the land. In 1979 they agreed to sell the land to the plaintiff. A deposit was made and the balance was to be paid according to the schedule of payment in the sale agreement on the defendants fulfilling certain obligations specified in the agreement. No further sum was paid since the defendants had not discharged those obligations. In his affidavit in applying for the interim injunction the plaintiff deposed that a week after the sale agreement was executed, he took possession and exercised all the rights and privileges of ownership as provided by the agreement. The plaintiff further deposed that on noticing the defendants' workers entering and taking away oil palm fruits from the land, he attempted to restrain the defendants and their workers but they continued to trespass on his land and to take away the oil palm fruits.

The defendants' contention was that the plaintiff, when he applied for the interim injunction, had not disclosed numerous material facts which would have caused the court to appraise the situation differently if they had not been suppressed.

Held:

[1] The interim injunction had been granted far more extensively than what the plaintiff was entitled to. The plaintiff had not disclosed certain facts material to the proceedings that the defendants had not surrendered absolute possession to the plaintiff, and that the defendants' presence on the said land was lawful under a different arrangement entered into between the plaintiff and the defendants for the plaintiff to collect and sell the oil palm fruits only after they had been harvested by the defendants' workers who were residing on the land with the plaintiff's permission, and that this arrangement was not revoked before the plaintiff applied for the interim injunction. Had the material facts been disclosed, the interim injunction would not have been in so wide a term.

[2] The failure of the plaintiff to disclose several material facts deprived the plaintiff of any advantage he might have already obtained from the proceedings. It is the duty of a party asking for an injunction to disclose to the court all material facts. If he does not, the Court will not grant him an injunction even if there were facts upon which the injunction might be granted. (*The King v. Kensington Income Tax Commissioners, ex parte Princess Edmond De Polignac* [1971] 1 K.B. 486, 504).

In *Sari Artists Film Productions Sdn. Bhd. v. Malaysia Film Industries Sdn. Bhd.* [1974] 1 MLJ 123, Hashim Yeop A. Sani J, observed that:

> The granting of an injunction is a discretion of the court. It is essential that the party asking the Court to exercise its discretion makes available to the court all facts which might be material for the consideration of the Court before exercising its discretion ...

[The interim injunction was dissolved.]

Cases referred to:
The King v. Kensington, ex parte Princess Edmund De Polignac [1917] 1 KB 486
Sari Artists Film Productions Sdn. Bhd. v. Malaysia Film Industries Sdn. Bhd. [1974] 1 MLJ 123

For the plaintiff/respondent - Upali Masacorale
For the defendants/applicants - G.S. Nijar

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Also found at [1982] CLJ 28